

HR Weekly Podcast

11/28/2007

Today is November 28, 2007, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic concerns a Fourth Circuit Court of Appeals decision regarding whether probationary employees have a right to a hearing under certain circumstances.

The City of Newport News, Virginia, terminated Christopher Sciolino, who was a probationary police officer, for supposedly advancing the mileage on his police cruiser so that he could obtain a new cruiser more quickly. After his termination, Sciolino sued the city's police department. He argued that, when discharging him, the city placed false information in his personnel file that was damaging to his good name without giving him a name-clearing hearing, which deprived him of liberty rights without due process of law. He asserted that the false information may be available to prospective employers.

The court acknowledged that Sciolino, as a probationary employee, has no protected "property" interest in his employment with the city. Nevertheless, the court stated that a public employer cannot deprive a probationary employee of the freedom to take advantage of other employment opportunities. Therefore, a Fourteenth Amendment liberty interest is implicated by public announcements or public disclosure of reasons for an employee's termination.

As to the meaning of public disclosure, the court noted that different circuit courts articulate varying standards as to the meaning of that phrase. Attempting a compromise, the court held that "stigmatizing information in the personnel file will trigger the right to a hearing if there is a likelihood it will be inspected by a prospective employer or the public at large." The employee must then allege and prove that "his or her former employer has a practice of releasing personnel files to all inquiring employers, or allege that the employer releases the files to certain inquiring employers, to at least one of whom the employee intends to apply."

As a result of an appeal of the Sciolino case, the International Public Management Association for Human Resources, or IPMA-HR; the International Municipal Lawyers Association, or IMLA; the National League of Cities, or NLC; the National Association of Counties, or NACo; and the National Public Employer Labor Relations Associations, or NPELRA filed a brief asking the United States Supreme Court to overturn this Fourth Circuit Court of Appeals decision. The brief argues that the circuit court's ruling will reduce the value of probationary employment and will make jurisdictions excessively cautious and hold hearings each time a probationary employee is terminated.

If this holding is not overturned by the Supreme Court, employers and HR professionals would need to be very cautious in situations where a probationary employee has to be terminated. The ambiguity of the Fourth Circuit Court of Appeals holding could potentially allow for terminated probationary employees to have hearings, which could be extremely time-consuming and costly for employers.

The Office of Human Resources will monitor the appeal of this case and update you with any new developments. If you have any questions about this issue, please call your HR Consultant at 737-0900.

Thank you.